

1                                   **BEFORE THE WESTERN WASHINGTON GROWTH**  
2                                   **MANAGEMENT HEARINGS BOARD**

3 CEDARDALE PROPERTY OWNERS,

4  
5                                   Petitioner,

6  
7                                   v.

8  
9 CITY OF MOUNT VERNON,

10                                  Respondent  
11

No. 02-2-0010

FINAL DECISION  
AND ORDER

12  
13                                   **I. SYNOPSIS**

14       The gravamen of this case is the tension between the City of Mount Vernon and property  
15       owners in south Mount Vernon over the provision of urban services in the southern  
16       unincorporated Mount Vernon UGA. Both parties see the encouragement of economic  
17       development in the UGA to be of benefit but neither presently has the money to pay for sewer  
18       lines throughout the UGA. The Petitioner alleges that the City must provide services so that  
19       development in the UGA can go forward. The City, on the other hand, has made a  
20       determination not to let development go forward until there is a level of infrastructure that can  
21       support it. Either approach is compliant with the GMA. The City has the discretion to choose  
22       which one to follow and it has chosen the latter.  
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25                                   **II. PROCEDURAL HISTORY**

26       On October 10, 2002, Petitioner filed a Petition for Review of the City's adoption of an  
27       amended Capital Improvement Plan for the years 2003-2008. The amended Capital  
28       Improvement Plan was adopted by Ordinance No. 3105 on August 7, 2002 and published on  
29       August 22, 2002.  
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1 The Petition for Review stated four issues but the fourth issue was the subject of a motion to  
2 dismiss by the City. This Board granted the motion to dismiss Issue No. 4 on the grounds that  
3 the Board lacks subject matter jurisdiction over the question:

4 Does the scheduling established in the CIP for projects S-97-15  
5 and S-97-16 provide a basis for denial of development permits by  
6 the City for property located solely within the UGA?

### 8 **III. ISSUES PRESENTED**

9 Three issues are presented to the Board for resolution:

- 10
- 11 1. Does the CIP comply with RCW 36/70A.070(3)(d) by identifying “Developer “ funding of
  - 12 \$1,470,000 for projects S-97-15 and S-97-16 to be located in the Mount Vernon UGA?
  - 13 2. Is the CIP reliance on “Developer” funding within the UGA consistent with the goals and
  - 14 policies of economic development found in the CIP?
  - 15 3. Are the land use element, capital facilities plan element, and financing plan within the
  - 16 Capital Facilities Plan element coordinated and consistent as required by RCW
  - 17 36.70A.070(3)(e)?
  - 18

### 20 **IV. BURDEN OF PROOF**

21 Pursuant to RCW 36.70A.320(1), and the 2000 amendments thereto, the City’s actions are  
22 presumed valid upon adoption. The burden is on petitioners to demonstrate that the action taken  
23 by the City is not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

24

25 Pursuant to RCW 36.70A.320(3), the Board “shall find compliance unless [it] determine[s] that  
26 the action by [the City] is clearly erroneous in view of the entire record before the board and in  
27 light of the goals and requirements of [the GMA].” In order to find the City’s action clearly  
28 erroneous, the Board must be “left with the firm and definite conviction that a mistake has been  
29 made.” *Dep’t of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

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3 **V. ANALYSIS AND DISCUSSION OF ISSUES**

4 **Issue No. 1: *Does the CIP comply with RCW 36.70A.070(3)(d) by identifying “Developer “***  
5 ***funding of \$1,470,000 for projects S-97-15 and S-97-16 to be located in the Mount Vernon***  
6 ***UGA?***  
7

8  
9 **Applicable Law:**

10 Each comprehensive plan shall include a plan, scheme, or design for  
11 each of the following:

12 ...

13 (3) A capital facilities plan element consisting of: ...

14 (d) at least a six-year plan that will finance such capital  
15 facilities within projected funding capacities and clearly  
16 identifies sources of public money for such purposes...

RCW 36.70A.070(3)(d).

17 The capital facilities element should serve as a check on the  
18 practicality of achieving other elements of the plan. The following  
19 steps are recommended in preparing the capital facilities element:

20 ...

21 (d) The creation of a six-year capital facilities plan for  
22 financing capital facilities needed within that time  
23 frame. Projected funding capacities are to be evaluated,  
24 followed by the identification of sources of public or  
25 private funds for which there is reasonable assurance of  
26 availability. The six-year plan should be updated at  
27 least biennially so that financial planning remains  
28 sufficiently ahead of the present for concurrency to be  
29 evaluated.

30 WAC 365-195-315(2)(d).  
31  
32

1       **Positions of the Parties**

2       Petitioner argues that the use of “developer” funding on the CIP schedule for capital projects is  
3       “planning by sewer” and fails to provide required planning in the unincorporated UGA.  
4       Petitioner’s Brief on the Merits, pp. 4-5. Petitioner urges this board to find that the City has  
5       failed to conduct compliant GMA planning with respect to projects S-97-15 and S-97-16.  
6       Petitioner’s Brief on the Merits, p. 10.  
7

8  
9       The City responds that a challenge to the land use plan was not raised in the petition for review  
10      but that in any event the City does have a South Mount Vernon sub-area plan which explicitly  
11      provides for the extension of sewer infrastructure into the unincorporated UGA. City of  
12      Mount Vernon, Response Brief, pp. 17-18.  
13

14       **Discussion**

15      Issue No. 1 is limited to the question whether the City, pursuant to RCW 36.70A.070(3)(d), is  
16      prohibited from using “developer funding” for some projects in its six-year capital facilities  
17      financing plan. As a threshold matter, we note that the action that Petitioner timely appealed  
18      was the adoption of the amended Capital Improvements Plan for 2003-2008. While the  
19      Capital Improvements Plan is part of the City’s Comprehensive Plan, the City did not open the  
20      entire Comprehensive Plan to challenge when it amended the Capital Improvements Plan.  
21  
22

23      In fact, as Petitioner conceded at oral argument, the amended Capital Improvements Plan for  
24      2003-2008 did not change the designation of funding for the projects at issue here from its  
25      prior designation. The City used the same term “developer funding” in its 2001-2006 Capital  
26      Improvements Plan as it uses in the Capital Improvements Plan for 2003-2008 for the very  
27      same projects: S-97-15 and S-97-16. Capital Improvements Plan for the years 2001-2006, pp.  
28      194-5. Developer funding is a strategy that the City has relied upon for years in setting its  
29      capital facilities financing goals; therefore, it is questionable whether Petitioner can challenge  
30      *unchanged* portions of this strategy without essentially circumventing the 60-day filing  
31      requirement provided in RCW 36.70A.290(2).  
32

1 Even assuming that Petitioner could appeal a provision of a plan that was unchanged in the  
2 new enactment, however, Petitioner has not shown that the City's use of "developer funding"  
3 for some of the projects in its CIP violates the GMA. Petitioner relies upon RCW  
4 36.70A.070(3)(d) for the proposition that public money must be identified for those projects.  
5 This provision states that the capital facilities plan element should include "at least a six-year  
6 plan that will finance such capital facilities within projected funding capacities and clearly  
7 identifies sources of public money for such purposes". RCW 36.70A.070(3)(d).  
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10 This language does not mean that every project on the capital facilities plan must be financed  
11 with public money. Previously, we have held that under the GMA, private funding is a  
12 reasonable alternative when a public entity does not have the funds to provide all the capital  
13 improvements necessary for development. *Clark County Natural Resources Council et al. v.*  
14 *Clark County, et al.*, 98-2-0001 (FDO July 30, 1998). "Denial of development permits would  
15 likely give great impetus to private funding of the various necessary improvements." Ibid.  
16 See also WAC 365-195-315(2)(d).  
17

18  
19 In addition, the City has adjusted the schedule in the CIP as the projects listed have secured  
20 public funding. Two of the original six sewer projects in the South Mount Vernon UGA have  
21 now obtained public funding. City of Mount Vernon's Response Brief, p. 10; Ex. 63, Ex. 49  
22 B. The City is proceeding to obtain funding for the designated projects but until it can, it has  
23 determined that development will not occur unless the developers themselves provide the  
24 needed infrastructure. As our sister board said:  
25

26 The choice of what is funded during a six-year financing plan is a  
27 discretionary choice of the County. It is not for Petitioner to decide  
28 which projects are to be funded in a six-year cycle. So long as the  
29 needs identified in the CFE are reflected in the capital improvement  
30 program, the scheduling of their implementation, including the delay  
of project to later years, is a discretionary choice of the County

31 *McVittie v. Snohomish County*, CPSGMHB 00-3-0006c (FDO Sept. 9, 2000), at 14-15.  
32

1 There are parameters to the City's obligation to see that infrastructure is provided within the  
2 UGA. By creating the UGA boundaries that it has, the City (in partnership with the County) has  
3 committed to public facilities necessary to support the planned development within the UGA.  
4 However, the time frame for providing those facilities is the twenty-year horizon of the  
5 Comprehensive Plan, not the six-year horizon of the Capital Improvements Plan.  
6

## 7 **Conclusion**

8 The City's financing strategy does not violate RCW 36.70A.070(3)(d).  
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11 **Issue No. 2: *Is the CIP reliance on "Developer" funding within the UGA consistent with***  
12 ***the goals and policies of economic development found in the CIP?***  
13

## 14 **Applicable Law**

15 Each comprehensive plan shall be an internally consistent document  
16 and all elements shall be consistent with the future land use map.  
17

18 RCW 36.70.070

19 This means that each part of the plan should be integrated with all  
20 other parts and that all should be capable of implementation together.  
21 Internal consistency involves at least two aspects:

22 (1) Ability of physical aspects of the plan to coexist on the  
23 available land.

24 (2) Ability of the plan to provide that adequate public facilities are  
25 available when the impacts of development occur (concurrency).

26 Each plan shall provide mechanisms for ongoing review of its  
27 implementation and adjustment of its terms whenever internal  
28 conflicts become apparent.

29 WAC 365-195-500.

30 'Consistency' means that no feature of a plan or regulation is  
31 incompatible with any other feature of a plan or regulation.  
32 Consistency is indicative of a capacity for orderly integration or  
operation with other elements in a system.

WAC 365-195-210.

1       **Positions of the Parties**

2       Petitioner urges that the City's use of "developer funding" in the CIP makes the  
3       CIP inconsistent with other parts of the comprehensive plan, notably the Overall  
4       Economic Development Plan. Petitioner cites to two provisions of the Overall Economic  
5       Development Plan:  
6

- 7               • Provide adequate industrial and commercial sites to  
8               accommodate planned population growth and with opportunity  
9               for local residents to be employed in Mount Vernon.  
10              • Proceed to aggressively market and implement opportunities for  
11              retail, industrial, and business/office park development in the  
12              South Mount Vernon area consistent with development and  
13              environmental requirements.

14       Exhibit 12.

15       Petitioner argues that the City has failed to plan infrastructure that would support these  
16       economic development goals.

17       The City responds that the South Mount Vernon sub-area plan expressly provides for the  
18       extension of sewer infrastructure into the South Mount Vernon UGA, to accommodate  
19       anticipated growth. City of Mount Vernon's Response Brief, p. 17. The City points to the  
20       intent of the sub-area plan, which references the OEDP, and indicates the intent is to  
21       "implement the goals and objectives of the City's Overall Economic Development Plan  
22       (OEDP) by promoting development of retail, limited industrial/manufacturing, and business  
23       office park developments concurrent with the expansion of urban public facilities and services  
24       and in consideration of the community's development standards, objectives, and  
25       environmental requirements." City of Mount Vernon's Response Brief, p. 19; Exhibit 63,  
26       Chapter Eight: Area Plans, p. 2.  
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1       **Discussion**

2       Petitioner argues that the City's choice not to fund projects S-97-15 and S-97-16 in the current  
3       CIP amounts to a failure to follow the goals of the City's Overall Economic Development  
4       Plan. However, Petitioner fails to provide any real reasons why failure to fund particular  
5       projects *at the present time* amounts to violation of the economic development goals.  
6       Petitioner appears to be arguing that an economic goal must be met at the highest possible  
7       speed, since Petitioner cannot argue that the City has failed to include sewer extension in the  
8       South Mount Vernon UGA as part of their sub-area plan.  
9

10  
11       The requirement of consistency among the various elements of the comprehensive plan cannot  
12       be extended to dictate the way in which the City chooses to meet its goals. Under the  
13       Washington Administrative Code, internal consistency is defined to involve both the ability of  
14       physical aspects of the comprehensive plan to co-exist on the available land, and the ability of  
15       the plan to provide that adequate public facilities are available when the impacts of  
16       development occur (concurrency). WAC 365-195-00. Here, the City is responsibly hinging  
17       development upon the availability of public facilities to serve it. The City plans to build the  
18       sewer infrastructure but hasn't yet been able to identify public funding for that purpose.  
19       Rather than simply prohibiting development until the City can provide the infrastructure, the  
20       City has indicated that the sewer expansion can proceed if developers wish to pay for it.  
21       Petitioner wants the City to hurry up and expand sewer service. In the Petitioner's judgment,  
22       this would best meet the City's economic development goals. However, the GMA does not  
23       give Petitioner the ability to substitute its judgment for that of the City.  
24  
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26  
27       Petitioner also argues that the City fails to define the term "developer" and that this failure  
28       makes it unclear who is responsible for paying for development. Petitioner's Brief on the  
29       Merits, p. 9. We do not agree that the term "developer" is vague. Those who develop property  
30       are "developers". The City has provided that, until another funding source can be identified  
31       for these projects, any sewer extension will be financed by those who wish to develop the  
32       property.



1  
2 **Conclusion**

3 The use of “developer funding” in the CIP for 2003-2008 is not inconsistent with the economic  
4 development goals contained in the CIP.  
5

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7 **Issue No. 3: *Are the land use element, capital facilities plan element, and financing plan***  
8 ***within the Capital Facilities Plan element coordinated and consistent as required by***  
9 ***RCW 36.70A.070(3)(e)?***

10  
11 **Applicable Law**

12 Each comprehensive plan shall include a plan, scheme, or design for each of the  
13 following:

14 ...

15 (1) A capital facilities plan element consisting of: ...(e) a requirement to reassess the  
16 land use element if probably funding falls short of meeting existing needs and to  
17 ensure that the land use element, capital facilities plan element, and financing plan  
18 within the capital facilities plan element are coordinated and consistent.  
19 RCW 36.70A.070(3)(e).

20 **Positions of the Parties**

21 Petitioner argues that the City has failed to coordinate and make consistent the land use  
22 element, capital facilities element, and financing plan within the capital facilities plan element  
23 as required by the GMA. Petitioner’s Brief on the Merits, p. 10. Petitioner argues that “[t]here  
24 is no attempt to link any of the elements of a policy for the South Mount Vernon UGA  
25 throughout the CP.” Petitioner’s Reply Brief, p. 2.  
26

27  
28 The City responds by pointing out, first, that Petitioner has not challenged the elements of the  
29 comprehensive plan itself – the land use element, the sub-area plan for South Mount Vernon,  
30 the economic development element of the comprehensive plan or the utilities element of the  
31  
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1 comprehensive plan. City of Mount Vernon's Response Brief, p. 4. Petitioner has only  
2 challenged the coordination of the financing plan found in the CIP with other elements of the  
3 comprehensive plan.  
4

5  
6 Second, the City urges that there is no inconsistency between the comprehensive plan and the  
7 financing plan shown in the CIP. Chapter Eight of the City's comprehensive plan includes the  
8 sub-area plan for South Mount Vernon. Ex. 63, Chapter 8. As part of the land use element,  
9 this sub-area plan designates the general location and the intensity of all land uses in the South  
10 Mount Vernon UGA. City of Mount Vernon's Response Brief, p. 13.  
11

## 12 **Discussion**

13 Issue No. 3 was taken from the Petition for Review. With admirable specificity, the issue  
14 describes a narrow challenge and cites to the provision of the Act upon which the claim is  
15 made. However, RCW 36.70A.070(3)(e) does not mandate reassessment of the land use,  
16 capital facilities plan element and financing plan within the capital facilities plan element of  
17 the comprehensive plan; it mandates that the capital facilities plan element *contain a*  
18 *requirement* for such a reassessment. A reassessment requirement is part of the capital  
19 facilities plan.  
20  
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22  
23 The distinction between a requirement falling directly under the GMA and a direction to  
24 include such a requirement in the City's own comprehensive plan is not insignificant.  
25 Throughout the GMA, the legislature balanced the imposition of statewide goals against local  
26 decision-making authority. For some issues, statewide requirements and processes are  
27 paramount. For others, the legislature mandated that the local jurisdiction set its own  
28 processes within more general goals. In this case, the legislature directed the counties and  
29 cities to include a requirement for reassessment of the land use element in their capital  
30 facilities plans if probable funding falls short of existing needs; but the counties and cities were  
31 free to determine how they would do that.  
32

1 Petitioner's argument is that the City must prove that it has engaged in a reassessment and  
2 show that there is no inconsistency between the land use element and the capital facilities plan  
3 element with its financing plan. This amounts to a kind of burden-shifting to the City to prove  
4 that it has reassessed the land use element and the capital facilities plan element to ensure that  
5 there has been no inconsistency. However, the cited section of the GMA (RCW  
6 36.70A.070(3)(e)) does not impose that burden on the cities and counties; and Petitioner has  
7 cited to no provision of law that does impose that burden. The cited section of the Act directs  
8 the inclusion of a reassessment requirement in the capital facilities element but it does not  
9 itself mandate reassessment  
10

11  
12 Neither party cited to any provision of the capital facilities plan that contains the reassessment  
13 requirement. It is therefore not clear whether there is such a requirement contained in the  
14 capital facilities plan. It is clear, however, that Petitioner has not alleged this deficiency.  
15 Since there has been no citation to the reassessment requirement in the City's capital facilities  
16 plan element itself, there is no way of knowing whether the City is in violation of its own plan  
17 requirements and thus of failing to abide by its adopted comprehensive plan. Because the  
18 burden is on Petitioner to prove that the City has acted in violation of the Act, the failure to  
19 even allege this deficiency (let alone to establish it) is fatal.  
20  
21

22  
23 Moreover, Petitioner has not alleged any provision of these parts of the comprehensive plan  
24 that are *not* consistent with each other. Petitioner makes the bald assertion that "the failure to  
25 phase makes the CP inconsistent" (Petitioner's Reply Brief, p.4) but fails to elaborate or to  
26 make its case. The most that Petitioner has offered is the language in the Urban Concepts  
27 chapter of the City's comprehensive plan (Ex. 63) that discusses annexation and development  
28 standards in Urban Growth Areas:

29           The first priority of the City is to annex and provide urban services  
30           on a priority basis to those areas immediately adjacent to the City  
31  
32

1 boundary where available services can most easily and economically  
2 be extended. This concept should encourage multiple property  
3 owners to cooperate in larger annexation proposals. Potentially,  
4 however, one property owner could block logical annexation.

5 Ex. 63, p. 2-5.

6  
7 Petitioner fails to establish that the CIP is inconsistent with this provision, let alone that this  
8 provision is part of the land use element, the capital facilities plan element or the financing plan  
9 within the capital facilities plan element as is the basis for challenge under RCW  
10 36.70A.070(3)(e). We are not satisfied that Petitioner has met its burden to prove that the City's  
11 actions were clearly erroneous.  
12

### 13 **Conclusion**

14 Petitioner has failed to establish that the City has acted in violation of RCW36.70A.070(3)(e).  
15

## 16 **VI. FINDINGS OF FACT**

17 The Board makes the following findings of fact:

- 18
- 19 1. The City of Mount Vernon is a city within Skagit County, a county west of the crest of the  
20 Cascade Mountains with a population in excess of fifty thousand that had its population  
21 increase by more than ten percent in the ten years prior to March 16, 1995, and is required  
22 to plan pursuant to 36.70A.RCW.  
23
  - 24 2. Petitioner is an association of property owners that own property in the South Mount  
25 Vernon Urban Growth Area ("UGA").
  - 26 3. Petitioners challenge the City of Mount Vernon's adoption of an amended Capital  
27 Improvements Plan ("CIP") for the years 2003-2008. The CIP was adopted in Ordinance  
28 No. 3105 on August 7, 2002 and published on August 22, 2002.
  - 29 4. Petitioner commented on the CIP and submitted a written letter to the City of Mount  
30 Vernon Planning Commission suggesting changes to the proposed CIP prior to its  
31 adoption.  
32

- 1 5. The CIP for the years 2003-2008 provides that two projects to extend sewer into the South  
2 Mount Vernon UGA, projects S-97-15 and S-97-16, will be financed through “developer  
3 funding”.
- 4 6. The prior CIP, for the years 2001-2006, had also provided that those two projects would  
5 be financed through “developer funding”.
- 6 7. The City has used the designation “developer funding” in prior CIPs for projects that later  
7 have been funded using public resources.
- 8 8. The City intends to construct the projects listed in the CIP in the South Mount Vernon  
9 UGA but has not currently identified a source of funding for the two projects – S-97-15  
10 and S-97-16.
- 11 9. The CIP for the years 2003-2008 provides public funding for some projects and developer  
12 funding for some or all of other projects.
- 13 10. The City has a sub-area plan for the South Mount Vernon UGA. Exh.63, Ch. 8. The sub-  
14 area plan calls for extension of sewer service throughout the UGA but sets aspirational  
15 goals rather than specific phases for extension of services.
- 16 11. The City’s strategy for funding sewer extension in the South Mount Vernon UGA is to  
17 list all the proposed projects, designate public funding when it is identified, and allow for  
18 private developer funding until other funding sources can be identified.
- 19 12. The City’s strategy for funding sewer extension is not inconsistent with the economic  
20 development goals for the South Mount Vernon UGA, even if the economic development  
21 goals could be achieved more swiftly with publicly financed sewer extension.
- 22 13. No party has cited a provision of the City’s comprehensive plan that requires reassessment  
23 of the elements of the capital facilities plan and the land use element upon probable  
24 shortfall of funding to meet existing needs.
- 25 14. The Urban Concept in the City’s comprehensive plan that provides for a priority on  
26 extending services to areas of the UGA adjacent to the city’s boundaries is addressed to  
27 annexation and contingent upon such extension being economically feasible.
- 28  
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1 15. Petitioner has failed to identify a provision of the capital facilities plan element or the land  
2 use element of the comprehensive plan that is inconsistent or uncoordinated with the  
3 challenged CIP.  
4

## 5 **VII. CONCLUSIONS OF LAW**

- 6  
7 A. This Board has jurisdiction over the parties and the matters alleged in the Petition for  
8 Review.  
9 B. The Petitioner has standing and has timely filed the Petition for Review.  
10 C. The challenged CIP is not inconsistent with the requirements of RCW 36.70A.070(3)(d).  
11 D. The identification of funding as “developer” in the challenged CIP is not inconsistent with  
12 the economic development goals of the City’s CIP.  
13 E. RCW 36.70A.070(3)(e) imposes a reassessment requirement as part of the capital facilities  
14 plan element of a jurisdiction’s comprehensive plan. It does not itself require reassessment  
15 of the elements of the comprehensive plan.  
16 F. Petitioner has failed to establish that the City has acted in violation of  
17 RCW36.70A.070(3)(e).  
18  
19

## 20 **VIII. ORDER**

21 The Petition having failed to meet its burden to establish that the City has violated the GMA,  
22 the petition for review is hereby **DISMISSED**.  
23

24 This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.  
25

26 Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of  
27 issuance of this final decision.  
28  
29  
30  
31  
32

So ORDERED this 28<sup>th</sup> day of March, 2003.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Margery Hite  
Board Member

Nan Henriksen  
Board Member

Holly Gadbow  
Board Member